

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL BROTHERHOOD)	
OF ELECTRICAL WORKERS, LOCAL)	
UNION 272, AFL-CIO,)	
)	
Plaintiff/Counterclaim Defendant)	
)	
v.)	Civil Action No. 07-304
)	Judge Joy Flowers Conti
FIRSTENERGY GENERATION CORP.,)	Magistrate Judge Lisa Pupo Lenihan
)	
Defendant/Counterclaim Plaintiff)	

MEMORANDUM OPINION

Plaintiff's complaint was received by the clerk of court and referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge's Report and Recommendation (the "R&R"), filed on August 22, 2008 recommended that the motion for summary Judgment filed by defendant FirstEnergy Generation Corp. ("defendant") be granted with respect to the enforcement of the arbitration award, but denied with respect to its request for fees and costs, and (b) the motion for summary judgment filed by plaintiff International Brotherhood of Electrical Workers, Local Union 272, AFL-CIO ("plaintiff") be denied, as the evidence could not support a finding, under the applicable standards, that the arbitrator's February 9, 2007 decision either exceeded the scope of

the issues presented for arbitration by the parties or directed a resolution or remedy that was improper in light of the parties' collective bargaining agreement (the "CBA"). On September 8, 2008, objections were filed by plaintiff.

This court reviewed the pleadings and submissions in the case, together with the R&R, and observes the following:

1) Plaintiff's objections are largely a reiteration of arguments presented in its prior pleadings.

2) Plaintiff correctly noted a typographical error on page 2 of the R&R, in which the letter "C" was designated, after being referenced *correctly* earlier in the sentence, in defining what was the "A" job category. It is repeatedly clear, however, from the remainder of the R&R that the magistrate judge understood the job categories at issue.

3) The R&R, while it cites to decisions in the commercial arbitration context, repeatedly provides multiple citations for the legal principles discussed therein, including repeated citations to the leading labor arbitration decisions, many of which are cited - with acknowledgment of the same language and holdings referenced in the R&R - in plaintiff's objections.

4) Plaintiff's assertions to the contrary notwithstanding, the R&R provided sufficient support for the conclusion that the arbitrator's decision reflected proper consideration of, and was grounded in, the CBA. Compare R&R at 11 with objections at 16.

5) As set forth in the R&R, the initial impressions regarding severability of the award were just that - initial impressions, and resolution of the question was expressly noted to be unnecessary to the recommended disposition of the case *sub judice*.

Accordingly, the following Order is entered:

AND NOW, this 29th day of September, 2008:

IT IS HEREBY ORDERED that defendant's motion for summary judgment be granted with respect to enforcement of the arbitration award, but denied with respect to its request for fees and costs, and (b) the plaintiff's motion for summary judgment be denied.

The R&R is adopted as the opinion of the court, with the typographical error on the next to the last line of page 2 of the R&R being corrected by deleting the letter "C" and substituting therefor the letter "A".

The Clerk shall mark this case closed.

/s/ Joy Flowers Conti
Hon. Joy Flowers Conti
United States District Judge